

§ 28.27

cases, section 3600A is inapplicable, because its evidence preservation requirement does not apply at all until a defendant is sentenced to imprisonment, as noted in § 28.22(b)(1).

(b) *Evidence not constituting biological material.* It is rarely the case that a bulky item of the sort described in section 3600A(c)(4), or a large part of such an item, constitutes biological evidence as defined in section 3600A(b). If such an item is not biological evidence in the relevant sense, it is outside the scope of section 3600A. For example, the evidence secured in the investigation of a bank robbery may include a stolen car that was used in the getaway, and there may be some item in the car containing biological material that derives from a perpetrator of the crime, such as saliva on a discarded cigarette butt. Even if the vehicle is kept until a defendant is sentenced to imprisonment, section 3600A's preservation requirement would not apply to the vehicle as such, because the vehicle is not biological material. It would be sufficient for compliance with section 3600A to preserve the particular items in the vehicle that contain identified biological material or portions of them that contain the biological material.

(c) *Preservation of portions sufficient for DNA testing.* If evidence described in section 3600A(c)(4) is not otherwise exempt from the preservation requirement of section 3600A, and section 3600A(c)(4) is relied on in disposing of such evidence, reasonable measures must be taken to preserve portions of the evidence sufficient to permit future DNA testing. For example, considering a stolen car used in a bank robbery, it may be the case that one of the robbers was shot during the getaway and bled all over the interior of the car. In such a case, if the car is kept until a defendant is sentenced to imprisonment for the crime, there would be extensive biological material in the car that would potentially be subject to section 3600A's requirement to preserve biological evidence. Moreover, the biological material in question could not be fully preserved without retaining the whole car or removing and retaining large amounts of matter from the interior of the car. Section 3600A(c)(4) would be relevant in such a case, given

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that fully retaining the biological evidence is likely to be impracticable or inconsistent with the rightful owner's entitlement to the return of the vehicle. In such a case, section 3600A(c)(4) could be relied on, and its requirements would be satisfied if samples of the blood were preserved sufficient to permit future DNA testing. Preserving such samples would dispense with any need under section 3600A to retain the vehicle itself or larger portions thereof.

§ 28.27 Non-preemption of other requirements.

Section 3600A's requirement to preserve biological evidence applies cumulatively with other evidence retention requirements. It does not preempt or supersede any statute, regulation, court order, or other provision of law that may require evidence, including biological evidence, to be preserved.

§ 28.28 Sanctions for violations.

(a) *Disciplinary sanctions.* Violations of section 3600A or of this subpart by Government employees shall be subject to the disciplinary sanctions authorized by the rules or policies of their employing agencies for violations of statutory or regulatory requirements.

(b) *Criminal sanctions.* Violations of section 3600A may also be subject to criminal sanctions as prescribed in subsection (f) of that section. Section 3600A(f) makes it a felony offense, punishable by up to five years of imprisonment, for anyone to knowingly and intentionally destroy, alter, or tamper with biological evidence that is required to be preserved under section 3600A with the intent to prevent that evidence from being subjected to DNA testing or prevent the production or use of that evidence in an official proceeding.

(c) *No effect on validity of convictions.* Section 3600A's requirements are enforceable through the disciplinary sanctions and criminal sanctions described in paragraphs (a) and (b) of this section. A failure to preserve biological evidence as required by section 3600A does not provide a basis for relief in any postconviction proceeding.